

Perkins  
Coie

607 Fourteenth Street NW  
 Washington, D.C. 20005-2011  
 PHONE: 202.628.6600  
 FAX: 202.434.1690  
 www.perkinscoie.com

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December 26, 2006

**VIA FACSIMILE**

Kim Collins, Esq.  
 Office of General Counsel  
 Federal Election Commission  
 999 E Street, NW  
 Washington, DC 20463

**Re: MUR 5869**

Dear Ms. Collins.

On behalf Montanans for Tester and Brett DeBruycker, as treasurer ("the Committee"), this letter is submitted in response to the complaint filed by Trevis Butcher, Executive Director of Montanans In Action, and subsequently labeled MUR 5869. This complaint is entirely baseless, contains no specific facts that constitute a violation of federal election law or Commission regulations, and should be immediately dismissed.

***A. The Complaint Does Not Allege a Violation of the FECA***

**1. The Complaint Does Not Allege Sufficient Facts**

The Commission may find "reason to believe" only if a complaint sets forth sufficient facts which, if proven true, would constitute a violation. See 11 C.F.R. § 111.4(a), (d) (2006). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true, and provide no independent basis for investigation. See Commissioners Mason, Sandstrom, Smith & Thomas, Statement of Reasons, MUR 4960 (Dec 21, 2001).

Though the Complaint offers few facts, it appears to allege that the Montana Democratic Party, the Montana Education Association-Montana Federation of Teachers, and the Committee coordinated with Raise Montana's Committee to Increase the Minimum Wage (hereinafter, "Raise Montana") to influence the election of Senator-elect Tester. The complainant alleges that "a triangle of organizations - the Democratic Party, the Tester campaign, and the MEA-MFT, are

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working with each other to promote Montana's minimum wage ballot measure as a means of turning out votes for Tester." (Compl. p. 3). The Complaint marshals almost no facts to support directly this claim.

The Complaint does not even list the Committee as a formal Respondent. Indeed, it only mentions the Committee in one paragraph of the Complaint. In that paragraph, the Complaint alleges only these facts concerning the Committee:

- That an unnamed individual who "submitted an affidavit in the I-151 and I-153 litigation" faxed the affidavit from a Committee office;
- That the Committee's website and press releases indicate that Senator-elect Jon Tester supported increasing the minimum wage increase; and
- That Senator-elect Tester stated during a campaign debate that he supported the minimum wage increase

(Compl. p. 3).

None of these allegations constitute a violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.* (2006), or of the Commission's regulations. Although it is difficult to tell precisely how the complainant believes the Committee violated the law, it appears to suggest that the Committee in some way coordinated or directed the activities of Raise Montana to increase voter turnout. That accusation cannot rest on the facts alleged above.

Most of the factual allegations merely describe instances in which Senator-elect Tester and his campaign have made public statements expressing support for the minimum wage increase. These statements, as a matter of law, are not evidence of illegal coordination. First, they do not even reference Raise Montana, much less mention voter turnout efforts or the creation or dissemination of any communications regarding the ballot initiative. Second, they do not meet any of the conduct standards of the Commission's coordination regulations, found at 11 C.F.R. § 109.21 (2006). These statements are not requests or suggestions for communications; they are not material involvement in, or substantial discussion concerning, any communications. And even if they could otherwise constitute material involvement or substantial discussion, their public nature exempts them from coordinated conduct. *See id.* § 109.21(d)(2), (3). In short, a candidate's public statements of support for a ballot initiative simply cannot be evidence of illegal coordination with a separate entity also supporting that ballot initiative.

That an individual associated with Raise Montana litigation faxed an affidavit from a Committee office is not only insufficient to rest a charge of illegal coordination, it is entirely inapposite. There is no allegation or evidence that this unnamed individual was an agent of either the Committee or of Raise Montana. There is, indeed, no allegation or evidence that this person had anything to do with Raise Montana or its political activities. And finally, even if there were any

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evidence that this individual were involved in Raise Montana's political activities, there is no allegation or evidence that he or she was either an agent of the Committee, or engaged in any coordination with the Committee. In short, this factual allegation is nothing but an excuse for "mere speculation" on the part of the Complainant.

Finally, even if the Complaint did allege specific facts of coordination between the committee and Raise Montana, it does not contain any facts – none – regarding activity undertaken by Raise Montana as a result of that alleged coordination. Though the Complaint speaks in broad terms about the intent to use Raise Montana as a vehicle to increase voter turnout, no actual communications or voter turnout activities are alleged. "Coordination" in and of itself is not prohibited by any federal law or regulation unless that conduct is paired with a resulting payment for coordinated activity. Therefore, the Complaint plainly does not allege sufficient facts that, if proven true, would constitute a violation of federal election law. The Complaint should be immediately dismissed.

## **2. As a Matter of Law, Coordination between Raise Montana and the Committee Would Not Have Resulted in Coordinated Communications**

Even if the Complaint had alleged specific facts regarding coordination between the Committee and Raise Montana, and even if it had alleged activity on the part of Raise Montana, such conduct would not have resulted in an in-kind contribution from Raise Montana to the Committee as a matter of law.

As the Commission's regulations makes clear, public communications are not considered "coordinated" unless the communications satisfy one of the four content standards. These standards apply to all public communications, including those at issue here; the Commission has recently applied this standard to registration and get-out-the-vote communications conducted by corporations under 11 C.F.R. § 114.4(c)(2), and found No Reason to Believe based on the failure of the communications to meet the content standards of section 109.21(c). See First General Counsel's Report, MUR 5684 (July 31, 2006)

It is the Committee's understanding that Raise Montana did not disseminate any public communications that referred to either Senator-elect Tester or the Democratic Party, nor did it disseminate any public communications that republished campaign materials prepared by Senator-elect Tester or the Committee. Therefore, no activity by Raise Montana met any of the content standards of 11 C.F.R. § 109.21(c). It is also the Committee's understanding that Raise Montana did not engage in any disbursements for voter turnout that were not public communications.

None of the Complaint's factual allegations, even if true, contradict the foregoing. The Complaint contains no allegation, evidence, or even speculation that Raise Montana disseminated communications referring to Senator-elect Tester or the Democratic Party. As a result, even if the Committee did coordinate activities with Raise Montana – a fact not clearly

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alleged by the Complaint – no coordinated communication would have resulted, and there would be no in-kind contribution from Raise Montana to the Committee. Thus, the Complaint does not allege facts that, if proven true, would constitute a violation of federal election law. The Complaint should be immediately dismissed.

***B. There Was No Coordination between the Committee and Raise Montana***

Regardless of the insufficiency of the alleged facts under Commission regulations and precedent, the Committee does wish to affirmatively rebut the charge contained in the Complaint. Therefore, the Committee is submitting an affidavit from Stephanie Schriock, the Committee's campaign manager during the 2006 elections and the incoming Chief of Staff for Senator-elect Tester. That affidavit makes clear that at no time did the Committee coordinate any activity with Raise Montana, either directly or through another person or organization. These facts should put to rest any question regarding the merits of the Complaint.

For the foregoing reasons, the Commission should dismiss the Complaint as to the Committee, and take no further action.

Very truly yours,

  
Marc Erik Elias  
Rebecca H. Gordon  
Ezra W. Reese

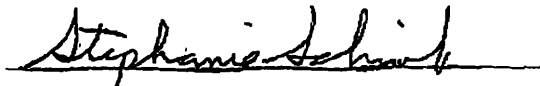
**DECLARATION OF STEPHANIE SCHRIOCK IN SUPPORT OF  
THE COMMITTEE'S RESPONSE TO MUR #5869**

In accordance with 28 U.S.C. § 1746, Stephanie Schriock declares as follows:

1. I served as campaign manager to Montanans for Tester, the principal campaign committee of Jon Tester.
2. To the best of my knowledge, neither I nor any agent of Montanans for Tester or Senator-elect Tester coordinated any activity with any agent of Raise Montana, either directly or indirectly.
3. To the best of my knowledge, neither I nor any agent of Montanans for Tester or Senator-elect Tester coordinated with any other person or entity concerning any activity conducted by Raise Montana.
4. To the best of my knowledge, neither I nor any agent of Montanans for Tester or Senator-elect Tester made any request or suggestion that Raise Montana conduct any activity, either directly or through another person or organization.
5. To the best of my knowledge, neither I nor any agent of Montanans for Tester or Senator-elect Tester were materially involved in any decisions regarding any activity conducted by Raise Montana, either directly or through another person or organization.
6. To the best of my knowledge, neither I nor any agent of Montanans for Tester or Senator-elect Tester engaged in substantial discussion with any agent of Raise Montana regarding any activity, either directly or through another person or organization.

I declare under perjury that the foregoing is true and correct

Executed this 26th day of December, 2006.



Stephanie Schriock

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